



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0072]

RIN 1625-AA00

Safety Zone; Jet Express Triathlon, Sandusky Bay, Lake Erie, Lakeside, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of Lake Erie in the vicinity of East Harbor State Park, OH, from 8:00 a.m. until 10:00 a.m. on September 9, 2012. This safety zone is intended to restrict vessels from portions of Lake Erie during the Jet Express Triathlon. This safety zone is necessary to protect participants, spectators and vessels from the hazards associated with triathlon event.

DATES: This final rule is effective from 8:00 a.m. until 10:00 a.m. on September 9, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0072. To view documents mentioned in this preamble as being available in the docket, go

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

On April 26, 2012, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones: Jet Express Triathlon, Sandusky Bay, Lake Erie, Lakeside, OH in the Federal Register (77 FR 24880). We did not receive any comments in response to the proposed rule. No public meeting was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard is issuing this temporary final rule less than 30 days after its publication in the Federal Register. Under 5 U.S.C. 553(d)(3), an agency may issue a rule less than 30 days before its effective date when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Accordingly, the Coast Guard finds that good cause exists for publishing this temporary final rule less than 30 days before its effective date because delaying the effective date of this temporary final rule would prevent its enforcement on the scheduled night of the event and thus, would preclude the Coast Guard from protecting spectators and vessels from the hazards associated with a maritime fireworks display.

B. Basis and Purpose

The organization Endurance Sports Productions is sponsoring a triathlon: a bike, swim and run event. The swim portion of the event will take place in Lake Erie. The participants will begin by jumping off the ferry boat JET EXPRESS II at the designated position, then swim to the dedicated position on shore. This swim portion will take place on September 9, 2012 at approximately 8:00 a.m. and will last about an hour. The Captain of the Port Detroit has determined that the swim portion of the event will pose certain public hazards. Such hazards include obstructions to the waterway that may cause marine casualties and vessels colliding with swimmers that may cause death or serious bodily harm. With aforementioned hazards in mind, the Captain of the Port Detroit has determined that a temporary safety zone is necessary to ensure the safety of participants and vessels during the practice, the half triathlon, and the triathlon events.

C. Discussion of Comments, Changes and the Final Rule

As mentioned above, no comments were received during the public comment period, and as such, no changes to the text of the rule were made.

The temporary safety zone established herein will be

effective and enforced from 8:00 a.m. until 10:00 a.m. on September 9, 2012. The safety zone will encompass all waters of Lake Erie within a direct line from 41°33'49"N, 082°47'8"W to 41°33'25"N, 82°48'8"W and 15 yards on either side of direct line. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not

require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of

small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the above portion of the Sandusky Bay of Lake Erie near Lakeside, OH between 8:00 a.m. and 10 a.m. on September 9, 2012.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only approximately two hours. Also, in the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. Additionally, the Coast Guard will give advanced notice to the public via a local Broadcast Notice to Mariners that the regulation is in effect. Moreover, the COTP will suspend enforcement of

the safety zone if the event for which the zone is established ends earlier than the expected time.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact ENS Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418-6040, e-mail Benjamin.B.Nessia@uscg.mil. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule would call for no new collection of

information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000

(adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A final environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. This rule involves the establishment of a safety zone and thus, paragraph (34)(g) of the Instruction applies. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0072 as follows:

§ 165.T09-0072 Safety Zone; Jet Express Triathlon, Sandusky Bay, Lake Erie, Lakeside, OH.

(a) Location. The following area is a temporary safety zone: all waters of Lake Erie within a direct line from 41°33'49"N, 082°47'8"W to 41°33'25"N, 82°48'8"W and 15 yards on either side of the direct line. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) Effective and Enforcement Period. This regulation is effective and will be enforced from 8:00 a.m. until 10:00 a.m. on September 9, 2012.

(c) Regulations.

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring

within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port Detroit or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Detroit or his on-scene representative.

Dated: August 6, 2012

J.E. OGDEN
Captain, U.S. Coast Guard
Captain of the Port Detroit

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